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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/353,583	07/15/1999	SAMUEL REICHGOTT	GEN-040	3801

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EXAMINER

TRAN, HAI V

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 12/26/2002

20

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/353,583

Applicant(s)

REICHGOTT ET AL.

Examiner

Hai Tran

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12/12/2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-46.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_



ANDREW FAILE

Continuation of 5. does NOT place the application in condition for allowance because:

Regarding claims 1, 24 and 43, Applicant argues, "Bacon fails to teach or suggest a set-top terminal with a processor that monitors an out-of-band control channel for information indicating that a download of data or programming is available on a specific in-band channel." In response, as discussed in the previous Office action (paper 18) the Examiner respectfully disagrees because Bacon Fig. 2A discloses the control data is received at an out-of-band data receiver 150 and carried over an out-of-band data decoder 146 to the descrambler control 110 so to generate appropriate control signals (Col. 8, lines 12-24) to indicate that a download of data or programming is available on a specific in-band channel (Col. 9, lines 63-67+ "Byte 16 and 17 indicate the frequency of the channel on which the downloadable program code transactions will be transmitted...").

Applicant further argues "This passage does not teach or suggest the claimed monitored of an out-of-band channel that broadcast an alert that new programming is available on a separate, in-band channel."

In response to Applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which Applicant relies (i.e., monitored of an out-of-band that broadcast an alert ...) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further argues, "Bacon never mentions using more than one channel in a process of downloading new program to the set-top."

In response, the Examiner respectfully disagrees and cites Fig.2 and Col. 6, lines 15-Col. 7, lines 40 to support.

Regarding claims 7 and 43, Applicant argues, "Bacon fails to teach or suggest the claimed deadline that is subsequent to an initial offering of a download."

In response, as discussed in the previous Office action (paper 18), the Examiner further cites "if the convenient flag is set, then in block A84 a message will be displayed to the subscriber indicating that "New software is available" and requesting "is it OK to update the software..." The control processor 128 will then wait for the subscriber key input in block A86, or after a timeout period, will accept the lack of a key input as an affirmative response..." (Col. 16, lines 20-42) to support the claimed limitation "said deadline being a specific point in time subsequent to an initial offering of the download of data or programming."

Regarding claim 18, The Examiner refers applicant to the above discussion of claim 7 and 43 to support the Applicant's argument "Bacon does not teach or suggest that execution of the new programming may be delayed until one or more criteria are satisfied that indicate executing the new programming will not inconvenience the subscriber."

Regarding claim 36, the Examiner cites Col. 16, lines 20-43 to support "commencing execution of said upgaraded programming only when one or more predetermined criteria are satisfied."

Regarding claim 41, Applicant argues "Bacon fails to teach or suggest a set-top terminal with two processor where one processor manages programming downloads and the other manages a user interface."

In response, the Examiner respectfully disagrees because "a secure microprocessor 136 determines whether the descrambler control 110 of MCC 104 carries out descrambling on a particular channel or what form of decrambling is required at a particular time by interpreting the authorization and control data downloaded from the system manager 12" at Col. 8, lines 12-50. Thus, it is safe to say the microprocessor 136 manages/controls data downloaded on a particular channel. Regarding Bacon's microprocessor 128, the Examiner cites Col. 8, lines 45-50 to support another processor to manage a user interface.

Regarding claims 45 and 46, Applicant argues, "Kraml does not teach or suggest a method in which a system controller can send a command to terminate execution of one programming version and initiate execution of another version by a networked device."

In response, the Examiner respectfully disagrees with the Applicant. Regarding "a system controller can send a command to terminate execution of one programming version and initiate execution of another version by a networked device", the Examiner cites again Col. 7, lines 10-42, specially from lines 35-42 of Fig. 4 to support.